

# *Wisconsin's Medicaid*

## Estate Recovery Program

Most commonly asked

Questions & Answers

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**Questions?**

**Call 1-800-362-3002**

# *Wisconsin Medicaid*

## Estate Recovery Program

***Here are some commonly asked questions and answers about the Estate Recovery Program.***

### **What is the Estate Recovery Program?**

Through the Estate Recovery Program the state seeks repayment for certain long term care services paid for by Medicaid on behalf of recipients. Recovery is made from the estates of recipients and from liens placed on their homes. The money recovered is returned to the Medicaid Program. It is used to provide care for others in need.

The Estate Recovery Program applies mainly to recipients of long term care services. Long term care services include nursing home services and Medicaid community-based waiver services. Wisconsin spends approximately 50% of its total Medicaid budget to provide these long term care services to less than 10% of all the state's Medicaid recipients.

To recover some of that money to provide services for other Medicaid recipients, Congress and the State Legislature passed the Estate Recovery Program laws. Those laws are designed to recover from the assets of those who received benefits from the Medicaid program. Recovery is made when a recipient and the recipient's dependents no longer need those assets.

## Which Medicaid recipients are affected by the Estate Recovery Program?

- **Medicaid recipients of any age who live in nursing homes** may have the cost of **all** benefits recovered that were received while they lived in a nursing home on or after October 1, 1991. Recovery is made by filing claims in estates and by filing liens against homes.
- **Medicaid recipients of any age who are in an inpatient hospital on or after July 1, 1995, and who are considered institutionalized recipients** may have the cost of all benefits recovered that were received during such stays.  
Institutionalized recipients are recipients who have been, or are expected to be, inpatients in a hospital for 30 or more days, and who are required to pay their monthly income toward their cost of care. Recovery is made by filing liens against homes for all recoverable costs incurred after April 1, 2000, and by filing claims in estates for costs incurred after July 1, 1995, not recovered through a lien.
- **Medicaid recipients age 55 or older** may have only specific benefits recovered that were **received while they lived in the community**. The benefits that were received on or after July 1, 1995, that may be recovered are:
  - ✓ Skilled nursing services.
  - ✓ Home health aide services.
  - ✓ Home health therapy & speech pathology services.
  - ✓ Private duty nursing services.
  - ✓ Additionally, personal care services received on or after April 1, 2000.

- **Medicaid recipients age 55 or older who reside in the community and receive services through a home and community-based waiver program** (COP Waiver, CIP IA, CIP IB, CIP II, Brain Injury Waiver, Community Supported Living Arrangements and Family Care) may have specific benefits recovered which were received on or after July 1, 1995, with the exception of Family Care. A new long term care program called Family Care is being piloted in select counties. Family Care services received on or after February 1, 2000, by enrollees are recovered as home and community-based waiver program services. The benefits recovered from waiver recipients are:
  - ✓ All services received through a home and community-based waiver program.
  - ✓ All inpatient hospital services received while the recipient was eligible for a waiver program.
  - ✓ All prescription drugs received while the recipient was eligible for a waiver program.

An individual who receives all or a combination of the above services may have the cost of those services recovered from his or her estate or through a lien.

## How does the state recover benefits?

The Estate Recovery Program uses two methods, claims in probate estates and liens, to recover the cost of Medicaid benefits.

The state seeks repayment by filing claims in **probate estates** to recover for community-based services, services received while a recipient lived in a nursing home, and services received while a

recipient was considered an institutionalized recipient in an inpatient hospital. If the recipient's estate includes a home, the state may, in certain circumstances, receive a lien on the home rather than immediate repayment. (For more information on these types of liens see Probate Estates section [page 7] regarding situations when the state's estate claim will be delayed.)

**Liens** may also be filed on homes of recipients who live in inpatient hospitals and are required to contribute to their cost of care, or who live in nursing homes. Liens are filed only when recipients are not expected to return to their homes to live. (For more information on these types of liens see Liens for Hospital and Nursing Home Residents section [page 15]).

### **When does the state not recover benefits?**

It is important to remember that the state may not seek recovery of any Medicaid benefits from a recipient's estate while the recipient's spouse or a minor, disabled, or blind child survives the recipient.

**However**, if the recipient's estate includes a home, the state will receive a lien. Repayment from the lien will be delayed until after the death of the surviving spouse and any minor, disabled, or blind children. Although the state is granted a lien by the court on the home of a surviving spouse or any minor, disabled, or blind child of a Medicaid recipient, if that property is sold for fair market value while the spouse or minor, disabled, or blind child lives, the state will release its lien and no recovery will be made.

Under current law, the state may not file a claim on the estate of the surviving spouse to recover Medicaid benefits paid on behalf of the recipient.

There are similar protections in the lien portion of the program that apply to nursing home and hospital inpatient residents. The state may not place a lien on the home of a recipient living in the community. The state may only place a lien on the home of a recipient who lives in a nursing home or in an inpatient hospital. In addition, the state may not place a lien on the home of a nursing home or hospital resident if there is a spouse or minor, disabled, or blind child residing in the home. (For more information on liens see Liens for Hospital and Nursing Home Residents section [page 15]).

## **Probate Estates**

### **How does the state recover benefits through estates?**

A Medicaid recipient's estate includes all assets owned by the recipient at the time of death, including any savings or checking accounts (whether solely-owned, joint, or payable on death to a beneficiary), stocks, personal property, and real estate. It may also include the proceeds from life insurance policies, annuities, or death benefits if those proceeds are payable to the estate rather than a beneficiary.

The legal process known as probate settles an individual's estate by distributing the estate to creditors and heirs and beneficiaries. Creditors file claims in estates to ensure payment of a debt owed them. The state is paid before most other creditors. Both the state and other creditors are paid before any assets are distributed to heirs or beneficiaries whether or not there is a will.

There are two ways in which the state recovers benefits through estates. When probate is proceeding through a court, the state will file a claim for payment with the court and with the individual handling the estate. When there is no court proceeding, the state generally recovers benefits by filing a claim for payment with the individual handling the estate using a statutory probate process called Transfer by Affidavit.

### **When can the state file a claim in an estate & what constitutes the claim amount?**

The state can file a claim in the estate of a recipient, if the recipient received care paid for by Medicaid in any or all of the following situations:

- While the recipient resided in a nursing home on or after October 1, 1991. The claim amount is for the cost of all Medicaid services received while residing in a nursing home.
- While the recipient was an inpatient in a hospital for a period of 30 days or longer on or after July 1, 1995, and required to pay a patient liability amount. The claim amount is for the cost of all Medicaid services received while an inpatient, on or after July 1, 1995.
- While the recipient was age 55 or older and resided in the community on or after July 1, 1995. The claim amount is for the cost of home health services and private duty nursing services received on or after July 1, 1995, and personal care services received on or after April 1, 2000. For home and community-based waiver recipients, the claim amount also includes waiver services, inpatient hospital services, and

prescription drugs received on or after July 1, 1995. The claim amount for Family Care enrollees in pilot counties, as home and community-based waiver recipients, will include the cost of services as reported by the Care Management Organization (CMO) to the Department, inpatient hospital services, and prescription drugs received on or after February 1, 2000.

### **How and when will a claim in an estate be paid?**

The state's claim will usually be paid by the personal representative of the estate according to standard probate procedures. The state's claim is paid after certain other expenses. Costs paid prior to the state's claim are:

- Costs of administering the estate, including attorney fees.
- Funeral costs.
- Costs of the last illness, if any, that were not paid by Medicaid.

If there are insufficient assets in the estate to pay the state's claim, the state is paid what is available and the recovery is ended. This applies to both claims in court probate proceedings and to the state's recoveries using affidavits.

### **Are the heirs allowed to keep anything from the recipient's estate?**

Yes. In the recovery of a claim against an estate, the court shall allow the heirs and beneficiaries to retain up to a total of \$5,000 in value of the following property:

- The decedent's wearing apparel and jewelry held for personal use.
- Household furniture, furnishings, and appliances.
- Other tangible personal property not used in trade, agriculture, or other business, not to exceed \$3,000 in value.

In addition, if the estate is probated using the Affidavit for Transfer process, the state will not recover any motor vehicles or recreational vehicles, regardless of their value.

**NOTE:** *This does **not** allow heirs to retain liquid assets, only personal property.*

### **Are there situations when the state's estate claim will not be paid or payment will be delayed?**

Yes, the state's claim will **not** be paid if there is any of the following:

- A surviving spouse.
- A disabled or blind child.
- A child under age 21.

Surviving spouses and minor, disabled, or blind children and their estates are completely immune from recovery of Medicaid benefits paid on a recipient's behalf.

**However**, if there is a surviving spouse, a disabled or blind child, or a child under age 21 **and** there is an ownership interest in a home in the recipient's estate, the court will place a lien on the home on behalf of the state. A lien placed during probate will not require payment as long as there is a surviving spouse, a child

under 21 or a disabled or blind child regardless of the property being sold.

**Although the state is granted a lien by the court on the home of a surviving spouse or disabled/minor child of a Medicaid recipient, if that property is sold for fair market value while the spouse and/or disabled/minor child lives, the state will release its lien and no recovery will be made.**

Payment of the state's claim may also be delayed in other instances. The state will receive a lien as full or partial satisfaction of its estate claim if there is a home in the estate and any of the following resides in the home:

- A son or daughter of the recipient who continuously lived in the home beginning at least 24 months before the recipient began receiving nursing home services, or services provided while considered institutionalized in an inpatient hospital, or home and community-based waiver services and who provided care to the recipient that delayed the recipient's receipt of such services.
- A brother or sister of the recipient who continuously lived in the home beginning at least 12 months prior to the recipient receiving nursing home services, or services provided while considered institutionalized in an inpatient hospital, or home and community-based waiver services.

The state may recover on one of these liens when the caretaker child or brother or sister dies or sells the home.

The placement of a lien through an estate may be done for nursing home recipients, institutionalized inpatient hospital recipients, and

community-based recipients. The reason being that this type of lien is a result of an estate claim.

### **Are there any exemptions if recovery would cause a hardship to an heir or beneficiary?**

Yes, the Department of Health and Family Services has set standards in Administrative Rule HFS 108.02(12) for determining whether the state's recovery would result in an undue hardship for an heir or beneficiary. An heir or beneficiary may apply for a waiver of the state's claim on their portion of the estate for one of the following reasons:

- The heir or beneficiary would become or remain eligible for Supplemental Security Income (SSI), food stamps, Aid to Families with Dependent Children (AFDC), or Medicaid, if the Department pursued its claim. (AFDC ended March 31, 1998.).
- The deceased's estate contains real estate used as part of the heir or beneficiary's business, which may be, but is not limited to, a working farm, and recovery by the Department would affect the property and would result in the heir or beneficiary losing his or her means of a livelihood.
- The heir or beneficiary is receiving general relief or veterans benefits based on need under s. 45.351 (1), Wis. Stats.

The person handling the estate will be notified of these rights and how an heir or beneficiary may apply for a hardship waiver when the estate is being probated through a court or through an affidavit process. That individual is responsible for notifying the heirs and beneficiaries of these rights. An heir or beneficiary can apply to the Department for a waiver of the recovery of his or her portion of the estate.

## Claims in Probate Court Proceedings

### **How does the state file a claim in a probate proceeding in a court?**

When an estate is being probated through a court proceeding, the personal representative or attorney handling the estate is required to notify the Department of Health and Family Services of the estate and of the time period in which a claim may be filed. The Department then calculates the amount of its claim and submits the claim to the court with a copy sent to the personal representative or the attorney.

The personal representative is responsible for the administration of the estate. The personal representative must make an inventory of the assets of an estate and determine what claims the estate must pay. Claims must be paid in accordance with standard probate laws and procedures.

## Recovery through Transfers by Affidavit

### **What is the Transfer by Affidavit process?**

This is a process that can be used to close a person's estate when the deceased has less than \$20,000 in solely owned property in this state. It is an alternative to using a court process for very small estates. If this process is used, an heir, a guardian, or the Department of Health and Family Services may collect the deceased's assets by submitting an affidavit to the person or institution possessing those assets. If a piece of real property is being transferred through the use of an affidavit, the Department

may place a lien on the property. The lien would be satisfied at the time the property is sold. The Department may not use the transfer by affidavit process to recover against wearing apparel, jewelry, household furniture, furnishings and appliances, or motor or recreational vehicles.

### **When can the state recover the cost of Medicaid benefits by use of an affidavit?**

The state can recover the cost of benefits by use of an affidavit if all of the following are true:

- The recipient has no surviving spouse or minor, disabled, or blind child.
- The recipient's solely owned property located in Wisconsin is valued at \$20,000 or less after funeral costs have been paid.
- 20 days have passed since death and no one has petitioned the court to probate the deceased's estate.

### **How does the state recover Medicaid benefits by use of an affidavit?**

If the above listed conditions are met, the Department will submit an affidavit to any person (institution or individual, **including an heir**) possessing funds of the deceased stating a claim to the funds. The affidavit includes the Department's claim against the estate. The person handling the estate may pay funeral costs, costs of administering the estate, and attorney fees from the estate prior to paying the state. Medical bills (including those from ambulance companies) should not be paid until after the charges are reviewed and approved by the Estate Recovery Program staff. The person possessing the funds must pay all remaining funds to the

Department upon receipt of an affidavit. Upon transferring all remaining funds to the Department, the person is released from any obligation to other creditors or heirs of the deceased.

## **Liens for Hospital and Nursing Home Residents**

### **What is a lien and what effect does it have?**

A lien is evidence of a debt or obligation that is filed against a particular piece of property with the Register of Deeds. It is similar to a mortgage in that it represents a debt that must be satisfied when the property is sold. It does not affect the ownership of the property. It **does not** require the recipient to sell his or her home.

### **When can the state place a lien on a home?**

Under some circumstances, the state may place a lien on the home of an inpatient hospital resident who is required to contribute to the cost of care, or of a nursing home resident who is not reasonably expected to return home. **The state cannot place a lien on the home of a recipient in the community.**

Before placing a lien, the Medicaid program must notify the recipient (or his or her responsible party) in writing and inform the recipient of the right to an administrative hearing concerning the lien process.

The state may place a lien on the home of a hospital or a nursing home resident **only** if the recipient cannot reasonably be expected to return home **and** none of the following people reside in the home:



- The recipient's spouse or minor, disabled, or blind child.
- A brother or sister of the recipient who has an ownership interest in the home and has continuously lived in the home beginning at least a year prior to the hospital or nursing home admission of the Medicaid recipient.

If a lien is placed on the home, it must be removed when a recipient returns home. If the recipient returns home, the local economic support worker or the recipient should contact the state and the lien will be removed.

### **When will payment of a lien be made?**

A lien will be paid when the home is sold. The lien is paid from the sale amount after the costs of the real estate transaction are paid such as the realtor's fee and any closing costs, and any mortgages on the home which pre-date the Estate Recovery Program lien.

A lien will not be paid at the sale of a home, before or after the recipient's death, if the recipient has a living spouse or a minor, disabled, or blind child. In addition, a lien will not be enforced after the recipient's death as long as either of the following resides in the home:

- A son or daughter of the recipient who continuously lived in the home beginning at least 24 months before the recipient was admitted to the hospital or nursing home and who provided care to the recipient that delayed the recipient's admission to the hospital or nursing home.

- A brother or sister of the recipient who continuously lived in the home beginning at least 12 months before the recipient was admitted to the hospital or nursing home.

### **What is paid by a lien?**

At the time a property is sold, a lien enables the state to recover specific amounts paid for Medicaid benefits. The department may recover funds for:

- All Medicaid services received while living in a nursing home on or after October 1, 1991.
- All Medicaid services received while a recipient is institutionalized in an inpatient hospital on or after April 1, 2000.
- Home health care services received by recipients age 55 or older on or after April 1, 2000, consisting of:
  - ✓ Skilled nursing services.
  - ✓ Home health aide services.
  - ✓ Home health therapy and speech pathology services.
  - ✓ Private duty nursing services.
  - ✓ Personal care services.
- All home and community-based waiver services (COP Waiver, CIP IA, CIP IB, CIP II, Brain Injury Waiver, Community Supported Living Arrangements) received by recipients age 55 or older on or after April 1, 2000, and
  - ✓ Prescription/legend drugs received by waiver participants.
  - ✓ Benefits associated with a waiver participant's inpatient hospital stay.

- All pilot program Family Care services received on or after February 1, 2000, and
  - ✓ Prescription/legend drugs received by Family Care participants.
  - ✓ Benefits associated with a Family Care participant's inpatient hospital stay.

A lien only recovers for the amount paid by Medicaid for benefits up to the date of sale. If more benefits are provided after the lien is paid, or if all of the benefits already provided were not payable from the sale, the state may file a claim in the recipient's estate to recover additional amounts.

### **What if I have questions about Medicaid or the Estate Recovery Program?**

If you have any questions, you may contact your local county or tribal social or human services department or Medicaid Recipient Services at 1-800-362-3002.

### **Are recoveries made for programs other than Medicaid?**

Yes, the state also recovers:

- The cost of benefits paid by the Wisconsin Chronic Disease Program (WCDP) for participants of any age for services that were provided on or after September 1, 1995.
- The cost of benefits paid by the Community Options Program (COP) for participants who are age 55 or older for services that were provided on or after January 1, 1996.

- The actual costs of non-Medicaid Family Care services provided on or after February 1, 2000, as reported to the Department for enrollees age 55 or older and living in the community; or that are any age and who live in an inpatient hospital and are required to contribute to their cost of care; or who live in a nursing home.

In the case of the COP and Family Care, any amount recovered is returned to the program and used for the benefit of other participants.

Liens are never placed on the homes of COP and/or WCDP participants during their lifetime because of receiving those services. Besides recovering from the estate of the COP or WCDP participant, the State may also recover from the estate of the participant's spouse. For more information about the Estate Recovery Program and these programs, contact your COP, WCDP, or Family Care caseworker.

For further information, please write:  
Department of Health and Family Services  
Estate Recovery Program  
P.O. Box 309  
Madison, WI 53701-0309

Or visit our Internet Web site at:  
**[www.dhfs.state.wi.us/medicaid1/recpubs/erp.htm](http://www.dhfs.state.wi.us/medicaid1/recpubs/erp.htm)**

